

BEFORE THE GOVERNING BOARD
OF THE
EVERGREEN SCHOOL DISTRICT

In the Matter of the Non-Reemployment of:

CERTAIN CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2011030503

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in San Jose, California, on April 5, 2011.

Ingrid A. Meyers, Dannis Woliver Kelley, represented Clif Black, Superintendent, Evergreen School District.

Christopher Schumb, Attorney at Law, represented the respondents, who are listed in Attachment A.

The matter was submitted on April 5, 2011.

FACTUAL FINDINGS

1. Clif Black, Superintendent, Evergreen School District (District), issued the accusation in his official capacity.

2. Respondents are certificated employees of the District.

3. The parties stipulated that all of the jurisdictional requirements of Education Code sections 44949 and 44955 have been met in this proceeding.

4. On February 10, 2011, the Governing Board of the District (Board) adopted Resolution #13/10-11 (Same Date of Hire Resolution), setting forth criteria for establishing the order of termination among employees who have the same date of first rendering paid service ("tie-breaking criteria").

The tie-breaking criteria assign points as follows:

A. Credentials and/or Degrees Held

Preliminary Credential	+1
Professional Clear Credential	+2
Masters or Doctorate (one award per degree)	+2
Additional Credentials or Supplementary authorizations	+2

B. Credentials to Provide Services in the Following Areas

ELL Certification (other than BCLAD)	+2
BCLAD	+3
Special Education	+3

C. Highly Qualified Teacher

NCLB Compliant in Current Assignment	+2
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D. Teaching Experience

1 – 5 Years	+1
6 – 10 Years	+2
11 or more Years	+3

E. Extra Duty Teaching Assignment

Current school year middle school athletic coaching position	+1
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5. On March 10, 2010, the Board adopted Resolution #14/10-11 (PKS Resolution), which it determined that it was necessary to reduce the following particular kinds of service no later than the beginning of the 2011 – 2012 school year:

PARTICULAR KINDS OF SERVICES	FTE¹ POSITIONS
English Language Specialists	8.1
Study Island Resource Teachers	4.0
Leveled Literacy Resource Teacher	0.5
Elementary Teachers	14.4
Total FTE	27.0

¹ Full-Time Equivalent.

The Board further determined that the District may deviate from terminating (“skip”) certificated employees in order of seniority, based on a specific need for personnel who possess special training and/or experience, or competency, necessary to teach specific courses or courses of study or to provide specific services, which others with more seniority do not possess, as follows:

1. Resource Specialist
2. Special Day Class
3. Pre-K Special Day Class
4. Speech
5. Psychologist
6. Adaptive PE
7. Mathematics
8. Science
9. Music

The Board directed Superintendent Black or his designated representative to give notices to certificated employees that their services would not be needed for the 2011 – 2012 school year.

6. Thereafter, the District revised the particular kinds of services it sought to reduce to:

PARTICULAR KINDS OF SERVICES	FTE POSITIONS
English Language Specialists	6.5
Study Island Resource Teachers	4.0
Leveled Literacy Resource Teacher	0.5
Elementary Teachers	14.0
Total FTE	25.0

The services set forth above are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 449455.

7. Prior to the April 5, 2011 hearing, the District rescinded the accusations against respondents Suzanna Jones and Jason Neiser.

8. At the April 5, 2011 hearing, the District rescinded the accusations against respondents Susana Faria and Ruth Hambley.

9. By the close of hearing, the District again reduced the number of respondents to be terminated. The District sought the authority to layoff respondents comprising 23.0 FTE positions. No permanent or probationary certificated employee with less seniority than

a respondent is being retained to provide a service for which a respondent is credentialed and competent to render.

10. The reduction or discontinuation of services is related to the welfare of the district and of its pupils.

LEGAL CONCLUSIONS

1. Cause exists to dismiss the accusations against the respondents identified in Factual Findings 7 and 8.

2. Because of the reduction of particular kinds of services set forth in Factual Findings 5 and 6, as revised by District's request at hearing for authority to terminate respondents comprising 23.0 FTE positions (Factual Finding 9), cause exists pursuant to Education Code section 44955 to give notice to the remaining respondents comprising 23.0 FTE positions that their services will not be required for the 2011 – 2012 school year. This cause solely relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

1. The accusations against the respondents identified in Factual Findings 7 and 8 are dismissed.

2. Notice may be given to the remaining respondents, comprising up to 23.0 FTE positions, that their services will not be required for the 2011 – 2012 school year.

DATED:

STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A

LIST OF RESPONDENTS

Ashley Beghin
Roberts Caldwell
Judy De Rama
Lindsey Elrite
Susana Faria
Michele Gereaux
Holly Gonzalez*
Kristen Green
Ruth Hambley
Tam Huynh
Andrea Jaffa
Suzanna Jones
Trisha Kuwada
Kori Lundberg
Mai Morgan
Manuel Munguia
Jason Neiser
Cindy Nunes
Deborah Opray
Anna Ordasi
Lisa Sato
Beulah Shirakawa
Jason Stull
Mai Anh Vu
Cherese Young
Katherine Yvonovich

*spelled "Gonzales" in exhibit 9